

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HENRY J. IACOVETTI,)	
)	
Petitioner,)	Case No. 1:11-cv-212-SJM-SPB
)	
v.)	
)	
THOMAS CORBETT, JR., <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER¹

The instant petition for writ of habeas corpus was received by the Clerk of Court on August 17, 2011 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Report and Recommendation, filed on November 13, 2012 [ECF No. 45], recommends that the instant habeas petition be denied and that a certificate of appealability be denied. The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI-Graterford, where he is incarcerated, and on the Respondents. No objections to the Report and Recommendation have been filed to date.

After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

¹ On May 3, 2012, this Court issued an Order [ECF No. 39] denying Petitioner's motion for a temporary restraining order. Petitioner appealed that ruling to the U.S. Court of Appeals for the Third Circuit, and the appeal is still pending. As the Magistrate Judge noted in her R&R, the filing of an interlocutory appeal from an order denying an injunction does not prevent a district court from proceeding to determine the action on the merits. *See United States v. Price*, 688 F.2d 204, 215 (3d Cir. 1982); Wright, Miller & Cooper, 16 Federal Practice & Procedure Juris. § 3921.2 (2d ed.). Accordingly, this Court retains jurisdiction to rule on the merits of the pending habeas corpus petition.

AND NOW, this 11th Day of January, 2013;

IT IS ORDERED that the instant petition for writ of habeas corpus shall be, and hereby is, DENIED. Inasmuch as reasonable jurists would not find it debatable that the instant petition is untimely, raises claims that are procedurally defaulted and/or fail to make a substantial showing of the denial of a constitutional right, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Report and Recommendation of Magistrate Judge Baxter, filed on November 13, 2012 [ECF No. 45], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

Cm: All parties of record.

U.S. Magistrate Judge Susan Paradise Baxter